



Case Summaries October 20, 2023

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GRANTS

PROCEDURE—TRIAL AND POST-TRIAL

Jury Instructions and Questions

Bruce v. Oscar Renda Contracting, 657 S.W.3d 453 (Tex. App.—El Paso 2022), *pet. granted* (Oct. 20, 2023) [[22-0889](#)]

The issue in this case is whether the trial court erred in signing a judgment that disregarded the jury’s award of exemplary damages due to language in the charge and a post-verdict jury poll indicating that the verdict was not unanimous.

As part of a flood-mitigation project undertaken by the City of El Paso, Renda Contracting was awarded a contract to install a pipeline from Interstate 10 to the Rio Grande River. Nearby homeowners sued Renda Contracting, alleging that vibration and soil shifting from the construction caused damage to their homes. At issue here are the parts of the jury charge related to exemplary damages. Question 7 instructed the jury that it could only find gross negligence if that finding was unanimous and if its finding of simple negligence in Question 1 was also unanimous. The jury answered “yes” to Question 7. Question 8 asked what sum of money should be awarded for exemplary damages. The instruction on Question 8 stated that the question should only be answered if the jury answered “yes” to Question 7, but the instruction did not require the jury’s answer to Question 8 to be unanimous. The jury awarded \$825,000 in exemplary damages.

The certificate at the end of the verdict reflected that the verdict was not unanimous, and only ten jurors signed the form. When the trial court polled the jury, ten jurors responded that the verdict was their individual verdict, and two responded that it was not. When the homeowners moved for judgment on the jury’s verdict, Renda Contracting objected to the award of exemplary damages because the verdict was not unanimous. The trial court signed a final judgment that disregarded the award of exemplary damages.

A split court of appeals reversed and remanded with instructions to enter a judgment on the jury’s verdict. The majority reasoned that Renda Contracting had waived its challenge by failing to properly and timely object to the jury charge and that Renda Contracting had also failed to carry its burden to prove that the verdict on exemplary damages was not unanimous.

Renda Contracting filed a petition for review, raising several challenges to the court of appeals’ opinion. The Supreme Court granted the petition.

GOVERNMENTAL IMMUNITY

Texas Tort Claims Act

City of Houston v. Sauls, 654 S.W.3d 772 (Tex. App.—Houston [14th Dist.] 2022), *pet. granted* (Oct. 20, 2023) [[22-1074](#)]

The issue in this case is whether the Tort Claims Act waives the City of Houston’s immunity in a negligence suit for damages caused by a Houston Police Department officer.

The officer—while responding to a 911 call for a potential suicide—was driving without his lights and siren activated in line with the Department’s policy for suicide responses. After the officer accelerated to 62 mph in a 40-mph zone, a bicyclist entered the street at an upcoming intersection. The officer did not see the bicyclist in time to avoid a collision, which resulted in the bicyclist’s death.

In the negligence lawsuit that followed, the City filed a motion for summary judgment that sought dismissal on grounds of governmental immunity. The trial court denied the motion, and the court of appeals affirmed.

The City petitioned for review, arguing that it has not waived governmental immunity because (i) the doctrine of official immunity prevents the officer from being personally liable to the plaintiffs under Section 101.021(1), and (ii) the emergency exception in Section 101.055(2) applies. The Supreme Court granted the City’s petition for review.

INTENTIONAL TORTS

Fraud

Weller v. Keyes, ___ S.W.3d ___, 2022 WL 3638204 (Tex. App.—Austin 2022), *pet. granted* (Oct. 20, 2023) [[22-1085](#)]

At issue is whether Section 21.223 of the Business Organizations Code shields a corporate agent from being held personally liable for torts committed during the course and scope of employment or in the role of corporate agent.

David Weller, the president and sole member of IntegriTech Advisors, spent several months in employment negotiations with MonoCoque Diversified Interests LLC, which is wholly owned by Mary Alice Keyes and Sean Leo Nadeau. The parties exchanged emails detailing compensation terms, Weller’s salary, IntegriTech’s training supplement, and payments based on quarterly revenues. Weller had other employment opportunities available but, in reliance on MonoCoque’s representations, declined those opportunities and accepted MonoCoque’s employment offer. After Weller’s acceptance, MonoCoque refused to pay him the promised revenue payments for the first quarter. Weller quit and in later discussions was told that MonoCoque had never intended to pay quarterly revenue interest or a training supplement.

Weller filed suit asserting various fraud claims against Keyes and Nadeau alleging that they were personally liable for their own fraudulent and tortious conduct notwithstanding that they were acting as agents of MonoCoque. Keyes and Nadeau filed a motion for partial summary judgment on all of Weller’s claims against them in their individual capacities. The trial court granted the motion, but the court of appeals reversed.

Keyes and Nadeau petitioned the Supreme Court for review, arguing that Weller only relied on statements that Keyes and Nadeau made in their capacity as representatives of MonoCoque and that Section 21.223 shields corporate agents from

personal liability for the corporation's contractual obligations. Weller responds that Section 21.223 only shields veil-piercing theories of liability and was never intended to preclude personal tort liability.

The Court granted the petition for review.